Previous references.

File No. 75
1903-04

1904

(III Courts)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 to 14.

PART B FOR November-1903.

SUBJECT.

Suit against the Amildar of Tiplur Taluk brought by one Halegowda.

P.T.O.

FILE No. 78 of 1903-04.

Suit brought against the Amildar of Tiptur, by one Halagegauda.

1 From the Deputy Commissioner, Tumkur District, No. 236, dated 28th November 1903. (9834)
Forwards for the orders of Government, the correspondence between himself and the Amildar of Tiptur, on the subject of a suit filed against the latter by one Halagegauda, and solicits sanction to the defence being conducted at Government cost. (Enclosure one file.)

2 To the Deputy Commissioner, Tumkur, and the Comptroller, Government Proceedings No. 1129-30—J., dated the 4th December 1904.
Sanctions the defence of the suit at the cost of Government, and directs the enforcement of the provisions of Rule 19 of the Police Rules in case the creditor should fail to obtain an order for attachment of the property in question, and the submission of the Amildar's explanation for the delay in reporting the service of a notice on him by the plaintiff.

3 From the Deputy Commissioner, Tumkur, No. 499, dated the 6th April 1904. (9155)
Submits, as ordered in Serial No. 2, the explanation of the Amildar, who begs to be excused.

4 To the Deputy Commissioner, Tumkur, No. 2174—J., dated the 15th April 1904.
Returns the file of records received with Serial No. 1 and directs that the results of the suit be reported for the information of Government.

5 From the Deputy Commissioner, Tumkur, No. 659, dated the 20th June 1904. (9177)
Forwards, for the information of Government, a copy of the Munsiff's order in the above case, and requests that the Government Advocate may be directed to prefer an appeal and to press for an order as to whether the suit is maintainable against the defendant, and whether the money that is absolutely at the disposal of Government, under Section 24 of the Police Rules, can become available to the creditors of the deceased. (Enclosure a copy of the Munsiff's judgment.)

6 To the Government Advocate, No. 2825—J., dated the 30th June 1904.
Forwards, obliging return, the entire file connected with the case and requests to be informed whether an appeal could be preferred against the Munsiff's decision.

7 From the Government Advocate, No. 3, dated the 6th July 1904.
States that at the present stage, where the decision has been only on the preliminary issues, an appeal cannot be preferred, and requests that copies of the plaint and the written statement should be furnished to him before he can inform what further points are to be urged in the defence.

8 To the Government Advocate in Mysore, No. 241- J., dated the 28th July 1904.
Forwards copies of the plaint and written statement and requests to be informed of the action that can be taken in the matter.

9 From the Government Advocate in Mysore, No. 21, dated the 4th August 1904.
Sets forth his opinion in the matter.

10 From the Deputy Commissioner, Tumkur, No. 89, dated the 5th August 1904.
Forwards for sanction a bill amounting to Rs. 13-8-0, on account of fees due to Mr. Y. Rama Rao, Pleader, for conducting the defence in the case on behalf of Government.

11 To the Deputy Commissioner, Tumkur, No. J. 459—C. 78 of 1903-04, dated the 17th August 1904.
Forwards for guidance copy of the Government Advocate's opinion on the suit and requests that the result of the further action taken in the matter may be reported for the information of Government.

12 To the Deputy Commissioner, Tumkur, No. J. 460—C. 78 of 1903-04, dated the 17th August 1904.
Returns the bill received with his letter No. 89 of the 5th August 1904, for the same being retransmitted with the signature of the presiding officer, and states that it will be preferable to send a consolidated bill at the conclusion of the case.

13 From the Deputy Commissioner, Tumkur, No. 172, dated the 7th September 1904.
States that a decree in favor of Halagegauda has been issued and submits for sanction and return a refund bill for Rs. 56-0-11, the amount credited to the Tiptur Taluk Treasury from the debtor of Halagegauda.

14 Government Proceedings No. J. 118-99—C. 78-14, dated the 11th November 1904, to the Deputy Commissioner, Tumkur, and the Comptroller to Government.
Sanctions the bill.

Office of the Dewan of Mysore.

File No. (if any) 78 of 1903-04

Directions.

No., date and purport of receipts to be entered in red, and office note in black ink in order of dates.—To be written only on one side, and inside the line of margin.

Office Note.

Branch Judicial

Subject Conduct of the defence at Govt cost in a suit brought by one Haliyavva of Talkunke against the Amildar of Deptur Letter No 236 dated 26th November 1903, requesting Sanction to the — — —

---

1. The facts are as follows: —

On the 5th November 1902, one Basan died without heirs in the village of Talkunke in the Deptur Taluk, leaving certain moveable and immoveable properties. The village of Talkunke is a Sarvamanyam village belonging to the Sri Vyasarayaswami Mutt. The Dt Magte decided that the Mutt was entitled to the immoveable property and that the Govt was entitled to the moveable property. He accordingly issued 2 proclamations under the Rules for the disposal of unclaimed property, viz

(1) On the 7th May 1903 as regards the sum of Rs 38/- being the sale proceeds of a

a Cow and a buffalo, which were sold by the Amildar on the 10th February 1903.

(2) On the 11th June 1903, in respect of certain Mer articles of household & ensilotea worth about Rs 17.

2. On the 22nd July 1903, one Nalagegowda thro' his Pleader C. Subba Rao, served the Amildar of the Depurdalur with a notice to the effect that he was a creditor of the deceased Basavi to the extent of Rs 30-0-0 for which he held a bond executed on Stamp paper, by which one of the fields belonging to the said Basavi was hypothecated to him, that as the Amildar held his property of the deceased in his possession, he would after the expiry of two months file a suit against him for the recovery of Rs 38-9-2 including principal and interest in the Limitation Munsiff's Court.

3. The Dy. Comr now reports that a sum of Rs 38 realized by the sale of certain of the movable property of the deceased is held in deposit by the Amildar and that there is no objection to the amount

amount being made over in satisfaction of any decree that may be passed for the debt. He further states that the Plaintiff served a notice on the Auditor of the 21st Oct, prior to the institution of the suit, but that the Auditor did not bring the matter to his notice, at once.

4. The Dy. Comr now solicits sanction to the defence being conducted at the cost of Govt. The case is posted for the 6th inst. for orders.

Submitted

11/12/03

5. The creditor ~~of the~~ of the deceased ~~cannot~~ is not a person having a "claim" to the immoveable properties (either by the process of the Revenue authorities, within the meaning of Rule 19 of the Regular Police Rules. He may have a lien on the hypothecated immoveable property, but till he obtains a decree ~~on~~ on the bond, and proceeds to execute it, he has no ~~claim~~ right to demand surrender of the moveables.

6. The claim of Hulligowda may therefore be contested, as proposed by the Dy Comr. If should, the period of four months from the date of proclamation Vide the 6th May & 11th June 1903, elapse

No notice was received by the Auditor on 24-7-03, but he reported the matter to the Dy Comr on the 11th November 1903.

without his procuring an order of attachment from the Civil Court, ~~the proceeds in Court will~~ the sale proceeds in deposit will be at the disposal of Govt, & the other undertakers may be dealt with & proceeds similarly dealt with.

To see both with a draft.

1-12-13

9th Dec Draft approved & cd issued

7. With reference to the last para of the Govt order calling for the explanation of the Amildar for the delay in reporting the service of a notice on him by the Plaintiff,

9th Dec 3 the Dt Magte forwards the Amildar's explanation stating that he has nothing more to add to the ~~one~~ explanation already furnished by him in his Ltr No 21 dated 17th November last and requesting to be excused.

8. The latter explanation is as follows: —

"It is true that a notice addressed to the Amildar and 2nd class Magte, was received from the Plaintiffs' Vakil on the 24th July last. A reference to that notice will convince that

that there was no need for any taking any further steps in the matter. There was not sufficient reason to think that a suit would be lodged because a notice had been given. This suit was not instituted within my jurisdiction. As the property — the subject matter of the suit — are in the possession of God the notice was given under the rule requiring such notice prior to the institution of the suit. This is a suit to establish the claim to the properties as per notifications issued by (the Dt Magte) on 7-5-03 & 11-5-03 terms of

9. If my not reporting above after receipt of the notice, be considered, an omission on my part, I solicit instructions as to whether the case should be defended or not."

10. Submitted for orders with a draft 'recording' the Dt Magte's letter.

11 draft issued —

12. The Deputy Commr forwarded copy of the order passed by the Munsiff of Tumkur in the suit instituted by Halige Gowda against the Amildar of Tiptur. The Munsiff has

has held that cause of action has accrued to the Plaintiff to file the suit and that the suit is maintainable against the Defendant (Dipty Asstt)

13 The Deputy Comr states that the question whether the creditor can lay claim to the sum of Rs 56—11—11 which has been credited to the Treasury as per Rule 198 of the Police Rules, does not seem to have been pressed before the Munsiff. He suggests that the Govt Advocate may be instructed to move an appeal and press for an order as to whether the money that is absolutely at the disposal of Govt under Rule 24 of the Police Rules can become available to the creditor of the deceased.

Submitted for orders

24/6/04

14 I think the opinion of the Govt Advocate as to whether there is a good case for an appeal to the district Court may be obtained for perusal before being sent to him

15 Yes please, as suggested

25/6/04

General and Revenue Secretariat.

File No. 78 of 1903-04

Serial No.	
	and similar cases, please kindly send drafts on the lines of your opinion to save time. I have now put up a draft. Sd/ B.K.V. 29-6-04.
	Issue. Sd/ K.S.C. 30-6-04
6.	To the Government Advocate. No 2825J, dated 30/6/04 Enquires whether, in his opinion, an appeal could be preferred against the decision of the Munsiff.
7.	From the Govt Advocate. No 3, dated 6th July 1904. States that an appeal cannot be preferred at this stage, but that he wants copies of the plaint and written statement in the case so as to enable him to inform for what further point, are to be urged in defence.
	Submitted with a draft to the Deputy Comr Tumkur. Sd/ J. K. S.
	Issue. Sd/ K.S.C. 9.7.04.
Filed	To the Deputy Commissioner, Tumkur: Letter No 72/78 J 03-04, dated the 12th July 1904

MGCPB—10,000—31-8-04.

General and Revenue Secretariat.

File No. 78 of 1908-02.

Serial No.

Filed.)

Requests him to obtain and forward for reference copies of the plaint and written statement in the case.

From the Deputy Commissioner Nandkot No. 43, dated 21st July 1902.

Filed.

Forwards copies of the plaint and written statement in the case, as desired in the above.

Submitted with a draft forwarding the same to the Government Advocate.

(D) S.R.

Issue.

H.S.G.

G.R.S.[12]

9

General and Revenue Secretariat.

File No. 78 of 1903-04

Serial No.

To the Government Advocate in Mysore No. 241/J dated the 28th July 1904.

Forwards copies of plaint & written Statement and requests to be informed of the action that can be taken in the matter.

9 From the Government Advocate in Mysore No. 21 dated the 4th August 1904.

Sets forth his opinion in the matter. May the Deputy Commissioner be informed accordingly and asked to report the result of further action taken in the matter. Sets forth also

pres 10/8/04 on. RR 10.8.04 20. Yes. Send copy of the Govt Advs opinion for guidance.

10.8.04

10 Letter from the Deputy Commissioner of Kolar No. 85 dated the 5th August 1904. ~~Forwards~~

Forwards for sanction a bill amounting to Rs 13.8.0, on account of fees due to Mr. G. Rama Rao, Pleader, for conducting the defence on behalf

NOTE.—Contn. sheet.

MGCPB—10 000—19-5-04

General and Revenue Secretariat.

File No. 78 of 1903 07

Serial No.

of fact in this case.

2/ The bill in question does not bear the Counter Signature of the Presiding Judge as required by ~~Rule~~ 7, (6) of the Govt. order No. 1532-85 / 92137 of 02-03 dt 16/3/04 but I draft for approval.

[illegible] 17/8/04 [illegible] 17.8.04

22 Draft forwarded 16.8.1904

17.8.04

11 To the Deputy Commissioner, Dumka. No. J 457 / C. 78 of 03 dt 17/8/04.

Forwards for guidance copy of the Govt. Advocate's opinion on the suit by Kalaga Sonde & requests that the result of the further action taken in the matter may be reported for the information of Govt.

12 To the same. No. J 460 / C. 78 of 03 dt 17/8/04.

~~Sends~~ Returns the bills for Rs 13/5/8 received with his letter No. 81 of the 5th August 1904. for the same being retransmitted with the ~~signs~~

General and Revenue Secretariat.

File No. 78 of 1903-04.

Serial No.

Signature of the presiding officer in the case stated that it will be preferable to send a Consolidated bill at the conclusion of the Case instead of the present bill for remuneration for defending one stage of the Case.

13. From the Deputy Commr. Dumka. No. 172 dated the 14th September 1904.

States that a decree in favour of Kalagoonda has been issued to submit for sanction & return a refund bill for Rs 56.0.11, being the sum credited to the Sipahee Jalah Treasury from the [illegible] Debtor of Kalagoonda &c.

23 Send with a draft proceedings for the orders

15/9/04. 16.9.04

24 The records relate to an erroneous endorsement issued by the Bundobast of Sipahee, which is not in the file. It is necessary before final orders can be passed. Call for it and the records connected with it.

16/9

General and Revenue Secretariat.

File No. 78 of 1903.04.

Serial No.

Draft Sd.
22/9/04. 9/9.
17.9.04

Dmc Direct 7/9

Filed)

From the Deputy Commissioner, Bellary District, No. 2252/2268 dated the 19th September 1904.

Requests that the endorsement issued to Halagegunda by the Sirsur Amildar may be forwarded for reference with the connected records.

From the Asst Commr, Bellary, No. 209 dated the 20th Septr 1904.

Filed)

States that the endorsement is not among the records and that the Amildar has been asked to send the copy.

Perhaps the reference called for may be awaited.

2/ Yr Dmc Remind the Asst Commr
28/9

28/9/04. 9/9.
28.9.04

From the Sirsur office No. 2288 26/9/04.

Filed)

Forwards an. extract from the petition regd & the endorsement given to Halagegunda

11

General and Revenue Secretariat.

File No. 78 of 190 A

Serial No.

28 Submitted with a draft for approval or for Mr Addo

12/10/04.

29. A copy of the decree dated 6 have been passed against the Defts-(Appr) has not been sent by the Addl Govt. I do not know that the decision of the Municipal Council Please get the entire records in O.S. No 172 of 1903 on the file of the Huissy Tribunal, thro' the Registrar of the Chief Court & after drafting the letter

14.10.04

To the Registrar, Chief Court. No J 946 dt 15.10.04. C. 78/03-04

Filed

Requests him to obtain & forward for perusal by Govt the entire records in O.S. No 172 of 1903 on the file of the Municipal Tribunal of Accra. (Attached herewith is the Addl Govt of 2/10/04)

Filed

From the Registrar of the Chief Court No. 2574/135 dated the 18th November 1904.

Forwards the records & requests their return when done with

Note Contn. sheet.

MGCPB—10,000 - 31-8-04.

G.R.S. 12]

General and Revenue Secretariat.

File No. 78 of 1903-04

Serial No. 30

Subsequent orders

3/4/04 5-4-04

31 The preliminary issues (as regards the existence of a cause of action and the maintainability of the suit against the Defendant-Amildar) having been decided by the Munsiff against the Defendant, the decree has necessarily been in favour of the Plaintiff, and has been passed against the assets of Basavi deceased that have come into the possn. of the Defdt.

32. The decision on the preliminary issues seems to me to be erroneous, for reasons alluded to in my note (supra) of 1-12-03, and in the Govt. Advocate's letter No. 21 of 4-8-04; & would well be contested in appeal on these grounds.

33 Perhaps, however, we need not take advantage of the technical grounds in an appeal, as the Plff's claim does

Note Contn. sheet.

MGCPB—10,000—31-8-04.

General and Revenue Secretariat.

File No. 78 of 1903-04

Serial No.	
	to have been a genuine one. And therefore we may accept the recommendation of the Govt Advocate and of the Dy Com[r] of Dumka and sanction the refund bill for the amount to be paid thereof.
	34 A Copy-noted by the bill to post Cy. Records the rec[d] to the Regr, ch. Ct, with the other papers
	Passed G. H. Cox
14	To the Deputy Comr Dumka and Copy to the Comptroller. A-Govt Proc: No 1188-89. d/11-11-04. Sanctioning the above.

MGCPB—10,000—31-8-04.

30-XI-B 40304. Urgent.

30-XI-1903 J 834

From The Deputy Commissioner of Tumkur.

To The Secretary to the Govt. of Mysore, General & Revenue Depttt.

Dated 26th }
Despatched 28 } November 1903

Received

General No. 236.
No.

Enclosure No. 1 file.

Submitting for orders correspondence ending with Tiptur Sheristadars report No 212 of 17th instant re a suit that has been filed against him by one Halagegowda of Nalkurke, and soliciting sanction to the defence being Conducted at the Cost of Government.

Ans
30. 11 03

1884 File No. 79 for —

Serial No. Deputy Commissioner's Office,
Tumkur District,
26th November 1903.

From

M. S. Narayana Rao Esqr.,
Deputy Commissioner,
Tumkur District.

To

A. V. Narjimalayya Esqr., M.A., M.L.,
Secretary to the Government of
His Highness the Maharaja of Mysore,
General and Revenue Departments.

Sir,

I have the honor to submit for the orders of Government Correspondence ending with the Tiptur Amildar's report No. 212 dated 17th instant regarding a suit that has been filed against him by one Hāligegowda of Kalkurke.

2 The Plaintiff sues for property now in the possession of the Amildar and which belonged to one Basavi that died in that village without leaving any heirs to succeed to the property. The Plaintiff alleges he is a creditor of the deceased and wants the property to be made liable for the debt due to him. The amount realized, viz Rs 38/- by the sale of the immovable ? movable ?

immovable property is held in deposit and there can be no objection to it being made over in satisfaction of any decree that may be passed for the debt. The sale of the property was held under orders passed by me in my capacity as District Magistrate. The Plaintiff served a notice on the Amildar prior to the institution of the suit but the Amildar did not bring the matter to my notice at once. Hence there was a delay in obtaining orders of Government on the subject.

2. I beg to solicit sanction to the defence being conducted at the Cost of Government. The Case is posted for hearing on the 6th of next month.

I have the honor to be,
Sir,
Your most obedient servant,

M Macnaghten

for Deputy Commissioner,
Trankur District.

File No 78 904-05
Serial No 2

Read.

Letter No. 2368 of the 26th
from the DS Cen^r, Quetta
D.O., stating therein, to confirm
at the cost of suit the defence of
a suit filed by one Haliefzai
of Kallerdke against the Amlakdar
of Zipli.

Order thereon.

The defence of the
suit at the cost of Govt
is sanctioned, with the remark
that among the grounds of
defence should be included
the fact that the creditor
of the deceased is not a person
who has a "claim" to the [redacted]
of the deceased [redacted] custody
of the Revenue authorities, within
the meaning of Rule 190 of the
Regular Police Rules, and that he
cannot proceed against [redacted] for
his alleged debt till he has
first obtained a decree for
the amount.

2. The DS Cen^r will note that, if
the creditor should fail to obtain an
order for attachment of the said property

within 6 months of the date of the declaration in which the claim is joined under the New Rules, the ~~case can be dealt with as if undisputed~~ provisions of Rule 19 can be fully enforced.

3. The explanation of the Builder for the delay in reporting the ~~matter~~ service of a notice on the Post Office Plaintiff should be obtained & submitted.

2/12/13

1-12-13

Ld

To Mr Ld Cnsl for Builder & returning record.

Mr Campbell, Mr G

J 1553.

1903

From The Deputy Commissioner of Tavoy.

To The Secretary to the Govt. of
H. A. the Maharaja of Mysore,
General & Revenue Department.

Dated 6th
Despatched 7th } April 1904.
Received

General No. 499
No.

Enclosure No. 1 & 6

Forwarding the Explanation of the Shildar of Tikthin for the delay in reporting the service of a notice on him by one Haliye Gowda.

Jr. P.
S. C. . .

J 1553 File No 78/03-04
Serial No 3

Office of the Deputy Commissioner,
Tumkur District
Tumkur 6th April 1904.

From

K. Doraswami Iyer Esq.,
Hg: Deputy Commissioner,
Tumkur District.

To

K. Anantasami Rao Esq. B.A.,
Hg: Secretary to the Government of
His Highness the Maharaja of Mysore
General and Revenue Departments.

Sir,

As requested in Government Order No 1129-30 of the 4th December last, I have the honor to forward herewith the Explanation of the Amildar of Tiptur for the delay in reporting about the service of a notice on him by Plaintiff Hatige Gowda. He states that he has nothing more to add to the one already furnished in his Memo No 212 of the 17th November last (which was forwarded with Mr. M.S. Narayana Rao's letter No 236 of the 28th November last) and begs to be excused.

The remainder records relating,

to the Explanation are herewith Submitted for reference.

I have the honor to be,
Sir
Your most obedient servant

N Y Irwin
for Obj: Deputy Commissioner,
Juniata District.

File No 78 of 03-04 7
Serial No 4.

Read:—
Letter No 499 dated 6th April 1904 from the Deputy Comr Dumka & Sub submitting with reference to para 3 of Govt order No 1129-30 dated 4th December 1903, the explanation of the Amildar of the Sikaripara Taluk for the delay in reporting about the service of a notice on him by one Haliga Gowda, intimating the institution of a suit against the Amildar for the recovery of certain property held by him as unclaimed property.

2174 15/4/04
Records

order thereon:—
Recorded.
2. The result of the suit instituted by Haliga Gowda should be reported for the information of Govt.
12/4/04
Secretary
To the Deputy Comr
Dumka
Returning records

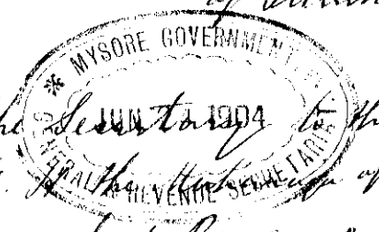
(Courts)

1903.

1903 vol.

From

The Deputy Commissioner of Tumkur.



To The Secretary to the Govt. of H. H. the Maharaja of Mysore, General & Revenue Depts.

Dated 20th
Despatched 22nd } June 1904
Received

General No. 657
No.

Enclosure No. /

Reporting the result of the suit instituted by Hatige-Gowda against the Amildar of Tiptur for the recovery of certain property held by him as unclaimed property.

§ 1903 File No 78 of 1902-05
Serial No 5

Deputy Commissioner's Office,
Tumkur District,
Tumkur 20th June 1904.

From

K. Doraiswami Iyer Esq.,
Offg: Deputy Commissioner,
Tumkur District.

To

A. Anantarami Rao Esq., B.A.,
Offg: Secretary to the Government of
His Highness the Maharaja of Mysore,
General and Revenue Departments.

Sir,

Adverting to Government order No 2174 of the 18th April 1904 directing that the result of the suit instituted by Haligé Gowda should be reported for the information of Government, I have the honor to state that as desired in Government Proceedings No 1124-30 dated the 4th December 1903, it was included among the grounds of defence that the creditor of the deceased was not a person who had a claim to the properties of the deceased in the custody of the Revenue authorities within the meaning of the

Regulation

Regular Police Rules and that he could not proceed against the said properties for his alleged debt until he had obtained a decree for the amount. But the issues that were framed were defective and led to an order in which our main point was evaded.

Another issue whether the suit was maintainable against the defendant was found against us.

A Copy of the Court's order is enclosed for the information of Government.

In accordance with the 2nd para of Government Proceedings No 1129-30 of the 4th December last the provisions of Rule 19 of the Police Rules have been enforced. A sum of Rs 56-4-11 was credited to the Treasury. The question remains whether the creditor can lay claim to this money and this question does not seem to have been pressed before the Munsiff. I beg leave to suggest that the Government Advocate may be requested

to move an appeal and press for an order as to whether the suit is maintainable and whether the money that is absolutely at the disposal of Government under section 24 of the Police Rules can become available to the creditor of the deceased.

I have the honor to be,
Sir,
Your most obedient servant,

B B Chumbadam
for offg: Deputy Commissioner,
Tumkur District.

In the Court of the Munsiff of Tirukkoyilur.

Before — S. Seshagiri Rao Esq., Munsiff.

O.S. No 172 of 1903-04.

Plaintiff	Defendants
Valeya Gounda	Tiptur Anildar.

Order

In this case the marginally noted preliminary issues were raised for trial on the defendants' contention to the effect that the suit is premature and that there is no Cause of action for the plaintiff

1. Whether Cause of action has accrued to plaintiff to file this suit.
2. Whether the suit is maintainable as against the defendant.

Issue I. Plaintiff's Counsel has submitted that since the Executant of the suit bond is dead and the Government have taken charge of his property as unclaimed property and have converted same into money and are further about to credit it to Government, the cause of action has accrued to his client to recover his debt. Another ground upon which he bases his cause of action is the endorsement (Exhibit B) given to him by the defendant to

to effect that his claims would be considered, if he produces a decree from the Civil Court.

He doubt according to the terms of the said hypothecation deed of 3 years time from date of that document, i.e, from 6th of, had been allowed to the Executant for repayment of the debt, and if the full period thus fixed was allowed to him that amount would become payable by the 6th October 1904, but that was fixed under the ordinary course of events when the Executant himself expected to repay the debt and does not I think apply to a case of this sort wherein the Executant becomes dead and his property is about to escheat to the Government. So far as the deceased was concerned no doubt he would have had the option to return the amount unpaid till the period prescribed in the document expired but under the present altered circumstances, I don't think it is open to his representatives or persons who come by the possession of his property to urge that point as a ground of defence.

From the way in which the said bond is worded it is clear that the amount was payable any day within the 3 years prescribed therein. From this it may be presumed

presumed that time was not of the essence of the Contract and that it is open to the creditor to sue for his debt whenever any circumstances arise which would threaten to deprive him of the security or the means of recovering the debt. (Compare Cunningham's Commentaries on the Indian Contract Act IX Edition pages 31 and 32 and also Section 68 of the Transfer of Property Act in this connection).

Further as contended for by plaintiff's Counsel it is not now open to the defendant to say that plaintiff has no cause of action since it was he who referred him to the Civil Court and wanted him to produce a decree in support of his claim.

I accordingly for the foregoing reasons decide the pt. issue in the affirmative.

Now coming to issue 2 — In para 2 of the written statement it is submitted that the immovables of the deceased are not in possession of the Government as they have been ordered to be given over to the Vyasaraya Swami Matt by the Deputy Commissioner

but it is not clear whether the defendant has ceased to have any control over that property. Further it is evident from what is stated in para 3 of the same statement that defendant has taken steps to convert deceased's movables into money, moreover, when plaintiff petitioned the defendant about this he was not told by the defendant that the immovables were not in his charge but was only asked to produce a decree from the Civil Court.

This no doubt led the plaintiff to presume that the defendant has been in charge of the deceased's property and caused him to file a suit as he has done. At any rate since the movables at least of the deceased are in possession of the defendant, the suit as laid cannot be considered as wrongly instituted as against the defendant.

The 2nd issue also is accordingly decided in plaintiff's favour.

/sd/ S. Seshagiri Rao
Munsiff.

Pronounced in open Court.

/sd/ S. S
14.3.04.

"Copy"

K Krishnadas
28 Pratty: Deputy Commissioner of Taxation.

File No 78 of 1904-05
Serial No 6.

To the Land Advocate
in Guyana

D/ 30/6/04

No 2825 (File of papers).
Y.

Have the kindness to
forward for the opinion
of the Solicitor General the
enclosed file connected
with the suit brought
by Baljit Gowda &
against the Assistant
Collector of Lipulor & request to
be informed if an appeal
may be presumed against
the Commissioner's decision

25.6.1904
D/S Secy

* To be kindly returned

Filed
30/6/04

J 61.

16

(contd)

No 3
Cu 1 file

Govt Arsenals Office
Bangalore 6th July 1904

From

The Government of Mysore

To

The Secretary to the Government of
His Highness the Maharaja
of Mysore
Revenue & Genl Depts

Sir,

In reply to your letter No 2825,
dated the 30th Ultimo I have the
honor to state that I have to peruse the
plaint & the written statement before
I can express my opinion. I request
to be favored with the copies of both.

2. There being no final decision
in the case but only a decision upon
the preliminary issue an appeal can
not be preferred at this stage. I however
want the above copies to inform the
Government what further points
are

are to be urged in the defence in addition to the points mentioned in the letter of the Deputy Commissioner - The Munsiff will have to decide the case upon the Issues and if he decides against the Defendant, it is only then an appeal has to be preferred.

The enclosures of the letter under reply are herewith returned.

I have the honour to be
Sir,
Your most obedt. Servt.
S Ramaswamy
Government Advocate

G.R.S. 26]

File No. 78

Serial No. 8.

Diary No. of letter replied to

No. 241-(780603-4) Ct.
Govt Secrets.

General and Revenue Secretariat
(Courts
, the 28/7/04 190 .

To

The Government Agent
in Mysore.

Date of issue 30/7/04

Signed by Mr. K.S. Chandra-
sekara Aiyar

His letter No 3 dated the 6th July 1904.

With reference to the above, I have the honor to forward herewith copies of the plaint and written statement in O.S. No. 192 of 1903-04, on the file of the Munsiff of Dunkur, (Kalegowda ~~to~~ the Amildar of Dipatur) with letter No. 655 dated the 20th June 1904 from the Deputy Commissioner, ~~Tumkur~~ Dunkur and its enclosure in original (to be returned

over.

SUBJECT.

returned when done with),
reporting the result of the
trial and to request to be
informed of the action that
can be taken in the matter.

By order

29/7/04

Secretary

List of enclosures.

Copied by P.R.R. 29-7-04

Examined by WM 29.7.04

M&CPL—5,000—20-5-04

No. 21.

Office of the Govt. Advocate
in Mysore
Bangalore, dated the 4th
August 1904

From

The Government Advocate
in Mysore

To

The Secretary to the
Government of His Highness
the Maharaja of Mysore
Genl & Revenue Depts.

Sir,

In reply to your Letter No.
241-(78 of 03-4), dated the 30th Ultimo
I have the honor to state that no appeal
lies at this stage as there is no decree
passed yet in the case. Under rule
24 of the Regular Police Rules, the
District Magistrate and not the
Taluq Magistrate is in charge
of the unclaimed property. Under
the said rule the Plaintiff has to

prefer

prefer his claim to the District Magistrate, he not having preferred his claim within the period of 6 months from the date of proclamation, the amount of Rs. 56-11-5 realized by the Sale of movables was credited to the Treasury - The Plaintiff is debarred from bringing his suit in the Civil Court under rule 24. The Endorsement of the Amildar cannot give a cause of action to Plaintiff. The Defendant is not in possession of any property of the deceased immovable or movable, movable in possession of the Government & the immovable in possession of Vyavasaya Swamy Matt. The Defendant has to file a supplemental written Statement setting forth all the above points. Th

Amildar

The Doesn't seem to have been done
7/10/

Amildar having given a wrong Endorsement to Plaintiff instead of directing the Plaintiff to prefer his Claim to the District Magistrate. I would suggest that the District Magistrate be requested to find out the truth of the Plaintiff's Claim under rule 24 of the said Police Rules & to pay him the amount if he finds his claim to be a true one.

The file under reference is herewith returned

I have the honr to be
Sir,
Your Most obedient Servant.

S Ramanathan
Government Advocate

III A
Dued 5/8
Courts 7.8.04

J343.

1904-05

From The Deputy Commissioner of Dunkur.

To The Secretary to the Govt. of H. H. the Maharaja of Mysore, General and Revenue Depts.

Dated 5th
Despatched 6th } August 1904.
Received

General No. 89
No.

Enclosure No. /

Forwarding for sanction a bill for Rs 13-8 received from Mr. V. Rama Rao, Pleader, for conducting the defence on behalf of Govt. in O.S. No 172 of 1903-04 on the file of the Munsiff of Dunkur.

J343

File No 78 for 04-05
Serial No 10.

Deputy Commissioner's Office,
Tumkur District,
Tumkur 5th August 1904.

From

K. Doraswami Iyer Esq.,
Deputy Commissioner,
Tumkur District.

To

R. K. Venkatavaradiengar Esq.,
Secretary to the Government of
His Highness the Maharaja of Mysore,
General and Revenue Departments.

In continuation of this office letter No. [illegible] of the 21st July last, I have the honor to forward herewith for sanction of Government a bill for Rs 13-5-8, received from Mr. G. Rama Rao, Pleader, Tumkur, for conducting the defence on behalf of Government in O.S. No 172 of 1903-04 on the file of the Munsiff of Tumkur which ended against the defendant on the 28th June 1904. The Court has awarded only Rs 8/- as Pleader's fee in the case, but as eight adjournments were made I request sanction to the additional fee of Rs 7/- claimed by the Pleader.

I have the honor to be,
Sir,
Your most obedient servant,

B Bhimadam
Dy. for Deputy Commissioner.

(G.R.S. 26)

File No. 78 of 03—m

Serial No. 11

Diary No. of letter replied to J 1503. of 03—m

No. 3469 C.78 of 03-4 8/7/04 Encls: one!

General and Rev. Secretariat
(Courts.)
, the 16/8/ 1904

To

The Deputy Commissioner of the Dundas District.

Date of issue 17/8/04

Signed by Alex K.B. Chandler for Secretary to Govt.

With reference to his letter No. 659 dated the 20th June 1904. forwarding copies of Order passed by the Assistant of Dundas in O.S. No. 172 of 03 on his file of the Munsiff. (Halagowda vs the Builders of Dipton) and suggesting that the Government Advocate may be requested to prefer an appeal and press for an order as to whether the suit is maintainable and whether the money that is absolutely at the disposal of Government under Sec 24 of the Police Rules.

over.

SUBJECT.

Ca become available of the
estate of the deceased, has
the honor to forward herewith
for his guidance copy of the
Government Advocate's opinion
in the matter and to request
that the result of further
action taken in the matter
may be reported for the
information of Government.

I have &c

16.8.1904
Secretary.

12.8.04

N.M.
12-8-04

List of enclosures.

Copied by T.G.K. 16-8-04

Examined by N.M. 16.8.04

MGCPB—5,000—20-5-04

(G.R.S. 26]

File No. 78 of 03-a
Serial No. 12

Diary No. of letter replied to J 343

No. 9/460
C. 78 of 08-4

General and Rev. Secretariat
(Bomb.)
, the 16/8/ 1908

To

The Deputy Commissioner
of the Dumkur District.

Date of issue 17/8/08

Signed by Mr K.S. Chandrey
Ag Secy

In returning the bill
for Rs 13.5.8 on account of
fees due to Mr. Y. Rama Rao,
Pleader, for conducting the defence
on behalf of Government in
Palc Halaggerode the Amildar
of Tiptur, received with his
letter No. 89 of the 5th August 1908,
I am directed to invite his
attention to sub-clause 6, [illegible]
para 7 of Govt order No. 1632-85
of the 16th March 1903 and 92137 of 02-03
and to request
that the bill may be retransmitted with the signature
thereto of the Presiding Judge in the

over.

SUBJECT.

Case. ~~Being obtained~~ ~~Thereto~~.

2. Mr Sellers prefers that at the same time, that the bill be submitted at the ~~end~~ conclusion of the case instead of the present bill for remuneration for defending one stage of the case.

By order

16.8.1904

Secretary

NR
12.8.04

12/8/04

List of enclosures,

Copied by V.H.K. 16-8-04

Examined by NR. 16.8.04

MGCPB—5,000—20-5-04

Court

(13)

A584

1904-05

From The Deputy Commissioner
Tumkur District

To The Secretary to the Govt
of His Highness the
Maha Rajah of Mysore
Genl and Rev Depts

Dated 4 Sept
Despatched 8 Sept
Received
General No.
No. 172
Enclosure No./ R. Bill

} September 1904

His docket no 45-9
C 780 of 03-4
dated 17th August 1904

Submitting a Refund
bill for Rs 56-11
for sanction and
return as requested
in this letter.

1581 – File No 1870/04-05
Serial No 13.

No: 172
Ex 1

Deputy Commissioners Office,
Tumkur District.
Dated, Tumkur, 7th September
1904

From
K. Doraiswamy Iyer Esqr,
Deputy Commissioner,
Tumkur District.

To
B.K. Venkatavarada Iyengar Esqr
Secretary to the Government of
His Highness the Maharajah of
Mysore, General and Revenue Depts.

Sir,

I have the honor to acknow-
ledge receipt No 459 dated 17th Aug V
C. 1870/03-4
August 1904 forwarding for guid-
ance Copy of Government Advocate's
letter No 21 dated 4th August 1904
in re the suit in the Civil Court
for the recovery of the property
that has come into our hands
under Rule 24 of the Police Rules. Aug VI

I am informed that a decree
in favor of the Plaintiff has
been duly given. The Government
Advocate has pointed out, that
in the Amildar issued a wrong
endorsement to the Plaintiff in-
stead of referring him to the District
Magistrate the Money in our

hands might be paid to him in case the claim was found to be true. The finding of the Sheriff would show that the claim was legitimate.

A Expired bill for Rupees 5-6-a-11 the amount that was credited to the Treasury is here with submitted for sanction.

I have the honor to be,

Sir,

Your Most obedient Servant.

Deputy Commissioner.

G.R.S. 28]

File No. 184/03-04

Serial No. 14

Diary No. of letter replied to J 584

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.
(Land)

, *the* 11/11/04 190

Date of issue 11/11/04

Signed by Mr. K.S. Chapekar

for Secretary to Government

READ.—

Letter No. 172 dated the 7th September 1904. from the Deputy Commissioner of the Dumkur District, stating, with reference to this office No. 459 C 78 Journal of the ~~7th September~~ 17th August 1904. regarding the suit against the Amildar of the Tiptur Taluk by the Halagowda, that a decree has been passed in favour of Halagowda by the Munsiff of Dumkur, and submitting for sanction and return a refund bill for Rs 56. 0. 11, being the amount ~~credited to the Tiptur Taluk Treasury~~ realized from

over

ORDER THEREON.—No.

SUBJECT

MGGPB—5000—21-6-04

The deceased

the debtor of Halagowda &
creditor of the Petitioner Lakshmi Devamma
under Sec 24 of the Civil Rules. Vide R

Correspondence ending with the above Minute
Docket No 1201 dated 26 Sept 1904.

Submit Thereon:—

Sanctioned J 1188-89
C.78-14
9.11.1904

17/11/04 Secretary

The Deputy Commissioner, Tumkur
with the bill.

The Comptroller in Mysore.

~~17/11/04~~ 17/11/04 ~~6.9.04~~

Copied: M.R.K. 10-11-04

Scanned: MRK 10-11-21